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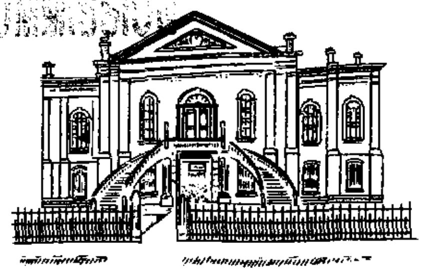

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STATE OF ILLINOIS
APPELLATE COURT
FIFTH DISTRICT
14TH & MAIN STREETS
P.O. Box 867
MT. VERNON, IL 62864-0018

May 22, 2003

Owen E. MacBride
Schiff, Hardin and Waite
6600 Sears Tower
Chicago, IL 60606

Joseph L. Lakshmanan
Illinois Power Company
500 South 27th Street
Decatur, IL 62525-0511

RE: ***Illinois Power Co. v. Illinois Commerce Commission, et al.***
Gen. No.: 5-02-0406 (ICC No.: 01-0432)

Dear Counsel:

Enclosed please find a copy of the decision in this cause which was filed in this Court on May 22, 2003.

Yours very truly,

L E Costa

Louis E. Costa, Clerk

LEC/bhd
Enclo.
cc: Eric Robertson
W. Michael Seidel
Kathleen Nolan, Special Assistant Attorney General - Chicago
Donna M. Caton, Chief Clerk - Illinois Commerce Commission

NOTICE

The text of this order may be changed or corrected prior to the time for filing of a Petition for Rehearing or the disposition of the same.

NO. 5-02-0406

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

FILED

MAY 22 2003

LOUIS E. COSTA
CLERK, APPELLATE COURT, 5th DIST

ILLINOIS POWER COMPANY, Petitioner, v. ILLINOIS COMMERCE COMMISSION, BUNGE LAUHOFF GRAIN COMPANY, SPECTRULITE CONSORTIUM, INC., A.E. STALEY MANUFACTURING COMPANY, GRANITE CITY STEEL DIVISION OF NATIONAL STEEL CORPORATION, CONTINENTAL GENERAL TIRE CORPORATION, ARCHER-DANIELS-MIDLAND COMPANY, AIR PRODUCTS & CHEMICALS, INC., CARGILL, INC., CENTRAL ILLINOIS LIGHT COMPANY, ENRON ENERGY SERVICES, INC., MIDAMERICAN ENERGY COMPANY, CITIZENS UTILITY BOARD, THE PEOPLE OF THE STATE OF ILLINOIS, NATIONAL ENERGY MARKETERS ASSOCIATION, ASSOCIATION OF ILLINOIS ELECTRIC COOPERATIVES, and MIDWEST ENERGY ALLIANCE LLC, Respondents.	Petition for Review of an Order of the Illinois Commerce Commission. No. 01-0432

ILLINOIS COMMERCE COMMISSION
2003 MAY 23 A 10: 47
CHIEF CLERK'S OFFICE

RULE 23 ORDER

On June 1, 2001, Illinois Power Company (IP) filed a petition pursuant to articles IX and XVI of the Illinois Public Utilities Act (Act) and asked the Illinois Commerce Commission (Commission) to approve certain proposed revisions to IP's delivery service tariffs (DSTs). See 220 ILCS 5/1-101 *et seq.* (West 2000). IP sought the Commission's approval of its proposed rates, terms, and conditions for delivery services to those residential customers who were eligible beginning May 1, 2002, as well as the revision of tariffs for nonresidential delivery service. Evidentiary hearings were held the week of November 26, 2001. Witnesses for IP, the staff of the Commission (Staff), MidAmerican Energy Company, Illinois Industrial Energy Consumers (IIEC), the Citizens Utility Board, and the Attorney General of the State of Illinois testified. The Commission denied IP's proposed rates, terms, and conditions for delivery of services as well as its proposed revision of tariffs. IP appeals.

Cost Allocation Methodology

For purposes of this appeal, the principal issue raised during the Commission's hearings involved how to determine the amount of common costs to be included in IP's distribution-revenue requirement that would be used as the basis for setting rates. Joint and common costs can support more than one line of business. Common costs are allocated for ratemaking purposes using some sort of allocation methodology.

Prior to discussing the proposed methodologies, it is important to describe a prior DST order of the Commission, which provides a basis for the Commission's ultimate decision in this case. In 1999, the Commission established the delivery service rates for IP. *Delivery Services Implementation Plan and Tariffs*, Ill. Commerce Comm'n Nos. 99-0120 & 99-0134 (August 25, 1999) (1999 DST Order). A variety of methodologies for determining the amount of general and intangible (G&I) plant to be included in the distribution rate base and administrative and general (A&G) expense to be included in the distribution operating expenses were proposed, ranging from a direct-assignment methodology proposed by IP to the use of a labor allocator proposed by IIEC. The Commission adopted IIEC's labor-allocator approach, stating as follows:

> "The Commission concludes that IIEC's proposed labor allocator for general plant is reasonable and should be approved. A labor allocator has been commonly utilized for allocation of general plant. The adoption of the labor allocator is particularly

appropriate in light of the problems associated with IP's Asset Separation Study. The Commission agrees with IIEC's position that costs associated with general plant may not be amenable to direct assignment to a particular function." 99 DST Order, Ill. Commerce Comm'n Nos. 99-0120 & 99-0134, at 30.

In this case the Commission heard various proposals on how to allocate common costs. Peggy Carter, vice president and controller of IP, testified regarding IP's methodology for allocating G&I plant and A&G expenses to the distribution service. She contended that IP had properly determined the amount of G&I plant and A&G expenses that should be included in the distribution-services revenue requirement by using a methodology consistent with the labor-expense allocation approach adopted by the Commission in the 1999 DST Order. IP's proposal did not include any generation labor expense in the development of its labor-expense allocation. Ms. Carter testified that because IP had divested its generation facilities prior to the 2000 test year (IP selected without objection a historical test year consisting of the 2000 calendar year ending December 31, 2000), there was no basis to allocate any of the common costs to generation. IP, therefore, allocated these costs among its three existing lines of business–gas, electric transmission, and distribution.

The Staff presented the testimony of Peter Lazare. Mr. Lazare is a senior economic analyst with the Commission. He received a bachelor of arts in economics and history from the University of Wisconsin and a master of arts in economics from the University of Illinois. Mr. Lazare has been employed by the Commission for nine years and has previously testified regarding cost-of-service, rate-design, load-forecasting, and demand-side management issues that concerned both electric and gas utilities. He previously worked for two years at the Minnesota Department of Public Service as a senior rate analyst, addressing rate-design issues and evaluating utility-sponsored energy-conservation programs.

Mr. Lazare recommended that the Commission reject IP's allocation methodology.

Mr. Lazare testified that IP's removal of generation from the allocation process resulted in a disproportionate increase in both G&I plant and A&G expenses over the level approved by the Commission in the 1999 DST Order. Mr. Lazare's direct testimony, which was submitted to the Commission in writing, included the following regarding IP's divestiture of its generation plant:

> "In the process of spinning off its generation to an unregulated affiliated subsidiary, the Company indicated that there would be no deleterious impact on electric customers. Company witness Dreyer had this to say on the subject in Docket No. 99-0209:
>
> > Illinois Power's electric customers will see no difference in the level or quality of service they receive, nor will the price they pay increase as a result of the transfer to WESCO. *** The transaction will be transparent to customers. IP Ex. 1.1., p. 8.
>
> However, the Company's proposals with respect to common costs show [*sic*] this not to be the case. By dividing up common costs during the course of spinning off generation, IP has shifted a considerable sum of common costs to the regulated utility. This not only saddles delivery services customers with potentially higher rates in the current proceeding, but it is also laying the foundation for higher rates for all electric customers when their bundled rates are updated to reflect the common costs calculated for the newly constituted IP."

He also testified that IP had failed to adequately explain how those costs were removed from generation.

Mr. Lazare offered an alternative proposal. This alternative proposal was guided by the principle that changes in G&I plant and A&G account levels over the levels approved in the 1999 DST Order should be proportional to changes in the associated direct accounts.

Any changes in A&G expenses would be consistent with the changes in direct operating and maintenance (O&M) expenses. For G&I plant, Mr. Lazare proposed that the increase in these accounts be limited to the same 20.91% increase IP proposed for distribution plant. Similarly, he proposed that A&G expenses be increased by 4.16% to reflect the same requested increase in distribution O&M expenses.

Nicholas Phillips, Jr., testified on behalf of IIEC. Mr. Phillips holds a bachelor of science in electrical engineering and a masters of business administration. His experience in the field included his employment by Detroit Edison Company in the engineering and operations divisions. He held positions as supervisor of cost of services and supervisor of economic studies. He handled rate cases for Detroit Edison Company before the Michigan Public Service Commission and the Federal Energy Regulatory Commission. He was employed by the consulting firm of Brubaker & Associates at the time of his testimony. His employment involved rate-base determinations, operating revenues, operating expenses, cost of capital, and other elements relating to the cost of services for various utilities.

Mr. Phillips recommended that the Commission reject IP's proposed allocation method. He testified that IP's requested increase of the expenses at issue were triple the amount allowed in the 1999 DST order. He testified that the fact that IP sold its generating assets did not in itself mean that the A&G expenses required for distribution services should triple. He believed that the better approach would be to allow A&G expenses to increase in proportion to the authorized increase in O&M expenses.

The Commission rejected IP's proposed allocation methodology, finding that it was inconsistent with the methodology used in the 1999 DST Order and further finding that IP had failed to show that the distribution service required such a significant increase. Regarding G&I plant investment, the Commission stated as follows:

"The Commission concludes that the procedure employed by Illinois Power to determine the amount of its G&I plant investment that should be included in distribution rate base is not appropriate and is inconsistent with the procedure that the Commission determined should be used in the 1999 DST Case, *i.e.*, based on the ratio of distribution labor expense for the test year to IP's total direct electric expense for the test year, 2000. IP has argued that because of divestiture of its generation function all assets that were not sold or transferred remain to support the remaining operations of the Company. The Commission finds such argument to be deficient in that there has been no showing that the remaining operations require such a large increase in G&I relative to the amount established by the Commission in 1999. ***

The Commission accepts Staff's contention that based on the 1999 DST Order, IP should be required to allocate a portion of its G&I plant to 'generation' even though prior to the test year in this case IP divested all of its generation, and had essentially no generation facilities [or] business or labor expense during the 2000 test year. The Commission also accepts the arguments of Staff and IIEC that based on the 1999 DST Order, the relative relationships between G&I plant investment in distribution rate base and distribution plant, or distribution labor expense, must be maintained in this case. The Commission recognizes that it is in the nature of common costs[,] such as G&I plant that support multiple lines of business, that the fact that one line of business and its direct assets is divested[] does not mean that the amount of G&I plant can or cannot be reduced correspondingly. Although IP has sold its generation assets and [exited] the generation business, as permitted under the Act, the Commission's approval in and of itself does not mean that the Commission has approved the accounting allocations made or that the amount of assets that were transferred are [*sic*] proper. The role of the Commission in divestiture of generation is limited by 16-111(g) [section 16-111(g) of the Electric Service Customer Choice and Rate Relief

Law of 1997 (220 ILCS 5/16-111(g) (West 2000))]. The Commission is of the opinion that IP can be required to continue to allocate a portion of its G&I plant investment to 'generation' for purposes of setting its distribution rates. [The] G&I plant that IP retains subsequent to divestiture of its generation business may have always supported the distribution business, but it was formerly allocated among all of the lines of business for regulatory ratemaking purposes and there has been no showing that the remaining lines of business require the level of assets as urged by IP." *Proposed Revisions to Delivery Services Tariff Sheets and Other Sheets*, Ill. Commerce Comm'n No. 01-0432, order at 17-18 (March 28, 2002) (March 28, 2002, Order).

The Commission further found that IP had also failed to adequately explain the significant increase in A&G expenses it sought. The Commission stated:

"The Commission concludes that the procedure employed by IP to determine the amount of A&G expenses that should be included in distribution operating expenses cannot be accepted at this time. The Commission finds that the record with respect to this issue is confusing, at best, and the justification put forth by IP in support of the significant increases in electric distribution A&G expenses is inadequate. IP argued that because it divested its generation function, all assets that were not sold or transferred and the associated operating expenses support the remaining operations of the Company. The Commission finds such arguments to be deficient in that there has been no showing that the electric distribution operations require such a large increase in A&G relative to the level approved in 1999.

The Commission notes that while IP claims to have significantly reduced its electric A&G expenses between 1997 and 2000, it does not reconcile these claims with the fact that it has requested to recover from distribution customers a significant increase in the level of A&G expenses. Because IP focuses on total electric A&G expenses but IIEC and Staff focus on electric distribution A&G expenses, the Commission cannot find that IP has adequately explained the significant increase in electric distribution A&G expenses relative to the level approved in 1999.

The Commission concludes that the amount of A&G expense that should be included in distribution rate base for purposes of this case is the amount proposed by Staff, as further adjusted based on any specific adjustments to A&G expense that are adopted by the Commission in other sections of this Order. The Commission accepts Staff's contention that based on the 1999 DST Order, IP should be required to allocate a portion of it's [*sic*] A&G expense to 'generation' even though prior to the test year in this case IP divested all of its generation[] and had essentially no generation facilities [or] business or labor expense during the 2000 test year. The Commission also accepts the arguments of Staff and IIEC that based on the 1999 DST Order, the mathematical relationships between A&G expenses in distribution operating expenses and distribution labor expense must be maintained in this case." March 28, 2002, Order, Ill. Commerce Comm'n No. 01-0432, at 48.

Analysis of the Cost-Allocation Methodology

The powers of courts in reviewing orders issued by the Commission are limited because reviewing courts exercise a statutory jurisdiction pursuant to the Act, rather than general appellate jurisdiction. *City of Chicago v. Illinois Commerce Comm'n*, 264 Ill. App. 3d 403, 408, 636 N.E.2d 704, 707-08 (1993). Under that strict statutory standard, the Commission's order is "presumed to be valid by the court." *City of Chicago*, 264 Ill. App. 3d at 408, 636 N.E.2d at 708. A reviewing court can only reverse, in whole or in part, a Commission rule, regulation, order, or decision if (1) the "findings of the Commission are not supported by substantial evidence," (2) the "rule, regulation, order[,] or decision is without the jurisdiction of the Commission," (3) the rule, regulation, order, or decision violates the federal or state constitution or laws, or (4) the manner by which the Commission decided its rule, regulation, order, or decision violated the federal or state constitution or laws "to the prejudice of the appellant." 220 ILCS 5/10-201(e)(iv); *Business & Professional People for Public Interest v. Illinois Commerce Comm'n*, 136 Ill. 2d 192, 204, 555 N.E.2d 693, 698 (1989); *People ex rel. Hartigan v. Illinois Commerce Comm'n*, 117 Ill. 2d 120, 142, 510 N.E.2d 865, 874 (1987).

The Act also places the burden on parties who appeal Commission orders. They bear the burden of proof on all issues raised and must overcome the presumption of validity and reasonableness accorded Commission orders if they are to prevail. 220 ILCS 5/10-201(d) (West 2000); *Illinois Power Co. v. Illinois Commerce Comm'n*, 316 Ill. App. 3d 254, 258, 736 N.E.2d 196, 200 (2000). In determining whether IP has met its burden, a court will not reweigh the evidence or substitute its interpretation of the evidence for that of the Commission. See *Illinois Power Co. v. Illinois Commerce Comm'n*, 254 Ill. App. 3d 293, 308, 626 N.E.2d 713, 722 (1993). Recognizing that Commission decisions are entitled to deference because they are judgments of an expert body appointed by the legislature, courts have uniformly refused to second-guess the Commission. *United Cities Gas Co. v. Illinois Commerce Comm'n*, 163 Ill. 2d 1, 12, 643 N.E.2d 719, 725 (1994); *Central Illinois Public Service Co. v. Illinois Commerce Comm'n*, 268 Ill. App. 3d 471, 479, 644 N.E.2d 817, 821-22 (1994). The credibility of expert witnesses and the weight to be accorded their testimony are peculiarly matters for the Commission as the finder of fact. *People ex rel. O'Malley v. Illinois Commerce Comm'n*, 239 Ill. App. 3d 368, 392, 606 N.E.2d 1283, 1292 (1993).

IP challenges various factual findings made by the Commission. The Commission's factual findings are *prima facie* correct and may be reversed only if IP successfully demonstrates that they are not based on substantial evidence. See 220 ILCS 5/10-201(d), (e)(iv) (West 2000); *United Cities Gas Co.*, 163 Ill. 2d at 11-12, 643 N.E.2d at 725; *O'Malley*, 239 Ill. App. 3d at 376, 606 N.E.2d at 1289. In order to satisfy this substantial-evidence standard, IP must do more than merely show that the evidence supports a different conclusion than that reached by the Commission. It must affirmatively demonstrate that the *opposite* conclusion is clearly evident. See *Abbott Laboratories, Inc. v. Illinois Commerce Comm'n*, 289 Ill. App. 3d 705, 714, 682 N.E.2d 340, 349 (1997); see also *Illinois Bell Telephone Co. v. Illinois Commerce Comm'n*, 282 Ill. App. 3d 672, 679, 669 N.E.2d 628, 632 (1996); *Continental Mobile Telephone Co. v. Illinois Commerce Comm'n*, 269 Ill. App. 3d 161, 171, 645 N.E.2d 516, 523 (1994). Further, under the substantial-evidence standard, "substantial evidence may support more than one possible finding, and possibly even several." *Central Illinois Public Service Co.*, 268 Ill. App. 3d at 479, 644 N.E.2d at 823. Deference to the judgment of the Commission is *especially* appropriate when a court reviews rate orders, such as the order here on appeal, because rate regulation is legislative in character, and courts will not interfere with the functions and authority of the Commission so long as its order demonstrates sound and lawful analysis. *City of Chicago*, 264 Ill. App. 3d at 409, 636 N.E.2d at 708.

After a detailed review of the conflicting expert testimony presented on this technical issue, the Commission rejected IP's proposed allocation methodology and adopted the method suggested by Staff witness Peter Lazare. The Commission concluded that IP's allocation methodology was not appropriate and was inconsistent with the methodology used in the 1999 DST Order. The Commission also found that a divestiture of generation in and of itself did not justify wholesale changes in the allocation and that IP had failed to show that the remaining distribution operations required such a large increase or to explain the disproportionate increases in these common costs/expenses.

Substantial evidence exists in the record to support the Commission's choice of the allocation methodology suggested by Mr. Lazare. Mr. Lazare testified that the allocation methodology used by IP was deficient and that his alternative method more appropriately allocated costs. According to Mr. Lazare, IP's methodology diverged from the Commission's 1999 DST Order because the Commission's allocator in the 1999 DST Order included the generation function while IP's did not. This omission fundamentally altered the allocation and significantly increased the allocation of the accounts at issue to delivery service--a 248% increase in G&I plant over the allocation approved in the 1999 DST Order and a 196% increase for A&G expenses. Mr. Lazare in his direct testimony in rebuttal, submitted to the Commission in writing, explained:

> "[T]he evidence in this proceeding indicates that IP has used the divestiture of generation as a vehicle for reallocating costs from the generation function to distribution and raising rates for delivery services customers. This refunctionalization approach clearly conflicts with the Commission Order in Docket No. 99-0134, which directed that General and Intangible Plant and A&G accounts costs be allocated to generation on the basis of a labor allocator. IP has reallocated assets to the transmission and distribution functions that the Commission determined to be generation-related in its Docket No. 99-0134 Order.
>
> *By failing to follow the labor allocator for generation, IP saddled the regulated transmission and distribution utility with an inordinate share of General and Intangible Plant and A&G accounts as a result of its generation divestiture.* IP's selective use of the labor allocator in this case for transmission and distribution only does not shield delivery services customers from inheriting an inordinate share of these costs." (Emphasis added.)

Mr. Phillips agreed with Mr. Lazare that the fact that the generating assets had been sold or transferred does not in itself mean that A&G expenses required for distribution services should triple and that, therefore, IP's proposed allocation of A&G expenses in this case did not produce reasonable results.

There was sufficient expert testimony to support the Commission's choice of allocation methodology. Again, the credibility of expert witnesses and the weight to be given their testimony are matters for the Commission to decide as the finder of fact. *O'Malley*, 239 Ill. App. 3d at 376, 606 N.E.2d at 1289. The Commission's decision to rely upon Mr. Phillip's and Mr. Lazare's recommendations was justified. Their expert testimony provided evidence that a reasoning mind would accept as sufficient to support the Commission's conclusion on the appropriate cost-allocation methodology. See *Metro Utility v. Illinois Commerce Comm'n*, 193 Ill. App. 3d 178, 184, 549 N.E.2d 1327, 1332 (1990). Thus, it satisfies the substantial-evidence standard. See *City of Chicago*, 264 Ill. App. 3d 403, 636 N.E.2d 704. IP has not demonstrated that the opposite conclusion is clearly evident. See *Continental Mobile Telephone Co.*, 269 Ill. App. 3d at 174, 645 N.E.2d at 524.

Deference to the Commission's factual findings is *particularly* appropriate when those findings involve the assessment of technical evidence, such as the findings at issue in this appeal. *Village of Apple River v. Illinois Commerce Comm'n*, 18 Ill. 2d 518, 523, 165 N.E.2d 329, 331-32 (1960); *Illinois Bell Telephone Co. v. Illinois Commerce Comm'n*, 203 Ill. App. 3d 424, 442, 561 N.E.2d 426, 439 (1990). Illinois courts have recognized that the choice of a method for allocating transmission and distribution investment involves the assessment of highly technical data and that the Commission's findings on this type of issue are entitled to considerable deference. *Abbott Laboratories, Inc.*, 289 Ill. App. 3d at 717, 682 N.E.2d at 351.

Abbott Laboratories, Inc., is in keeping with a long line of cases in which courts have repeatedly deferred to the Commission's determinations on cost methodologies generally. In *Lefton Iron & Metal Co. v. Illinois Commerce Comm'n*, 174 Ill. App. 3d 1049, 529 N.E.2d

610 (1988), the court rejected a claim that the Commission had used an improper cost methodology in computing variable costs, stating that it would "defer to the expertise of the Commission in its determination that the cost methodology *** was acceptable." *Lefton Iron & Metal Co.*, 174 Ill. App. 3d at 1057, 529 N.E.2d at 615. In *Governor's Office of Consumer Services v. Illinois Commerce Comm'n*, 220 Ill. App. 3d 68, 580 N.E.2d 920 (1991), the court deferred to the Commission's expertise regarding the proper time period to be used in a cost-of-service study. See also *Central Illinois Public Service Co.*, 268 Ill. App. 3d at 478, 644 N.E.2d at 822 (the court upheld the Commission's adoption of a fully-allocated-cost methodology as a "reasoned choice").

In this case, the Commission was presented with conflicting expert testimony on technical questions on which the Commission possesses considerable expertise. "It is precisely this kind of technical issue which requires a reviewing court to defer to the expertise of the Commission." *Central Illinois Public Service Co.*, 268 Ill. App. 3d at 479, 644 N.E.2d at 823.

The general principle that guided the allocation is that changes in G&I plant and A&G account levels should be proportional to changes in the associated direct accounts over time from the 1999 DST Order to the instant case. For example, the increase in G&I plant is commensurate with the increase in other distribution-plant accounts. Similarly, any change in A&G expenses is consistent with the changes in direct O&M expenses.

IP argues that because it no longer owns generation facilities, those common costs previously allocated by the Commission to generation in the 1999 DST Order should now be completely reallocated to distribution. IP failed to show that common costs previously assigned to its generation business are necessary to the provision of distribution service. There was expert testimony that the fact that IP has sold or transferred its generating assets does not mean in itself that expenses required for distribution services should triple.

In addition, IP argues that even if the Commission's rejection of its allocation methodology was appropriate, the Commission should have, at a minimum, approved IP's proposed additions to G&I plant since January 1, 2000. Accordingly to IP, these capital additions were clearly distribution related and, therefore, should have been included in the distribution rate base in their entirety. There is evidence in the record disputing IP's conclusion. Staff witness Mr. Lazare testified that IP failed to show that those additions related solely to the distribution function and could not service other functions as well. According to Mr. Lazare, IP did not provide detailed supporting exhibits but instead furnished broad and vague descriptions that failed to demonstrate that the capital additions pertain solely to the distribution function.

The record discloses that the Commission considered various allocation methodologies and reasonably determined that the methodology proposed by Staff and IIEC should be adopted.

Decision to Require IP to Offer Rider Partial Requirements Service

IP raises a second issue on appeal pertaining to the rates paid by partial-requirements customers. A partial-requirements customer is one who has a portion of its electricity provided by IP and a portion provided by some other provider. At the time IP filed this case, those customers were required to take the electricity supplied by IP under IP's standard bundled-service tariff. In its filing, IP requested approval to change its tariffs and implement a separate mandatory tariff, called "Rider Partial Requirements Service" (Rider PRS), that would be applicable to the IP-supplied portion of the partial-requirements customer's electric load. Under Rider PRS, IP would charge partial-requirements customers more than it charged customers who took service under its real-time pricing rate. IP requested approval to charge partial-requirements customers a 10% surcharge above the hourly market-based cost of power it charged to other customers. The customer would also pay an administrative charge, the applicable distribution rates, the applicable transmission charge, and charges for transmission service. In addition, partial-requirements customers would be prohibited from continuing to take service under the standard bundled-service tariff.

IIEC objected to some of the provisions of IP's proposed Rider PRS, particularly to the 10% surcharge on the hourly real-time price and the elimination of the option to use the bundled-service tariffs. In response, IP withdrew its proposal to implement Rider PRS and stated it would retain the provisions applicable to partial-requirements customers in its then-current tariffs.

After reviewing the testimony presented on this issue, the Commission adopted IIEC's recommendation that IP be required to provide partial-requirements service under an hourly-pricing option and under bundled-service tariffs, that is, customers could choose whether to place that portion of their load served by IP on Rider PRS or on the standard bundled-service tariff applicable to the customer. The Commission also rejected IP's proposed 10% surcharge on the hourly real-time price in Rider PRS, finding that IP had not adequately demonstrated that it incurs costs that would be recovered through the surcharge. The Commission's order states:

> "Next, the Commission will consider the substance of IIEC's proposed changes to IP's partial requirements tariffs. IIEC recommends that IP be required to provide partial requirements service under an hourly pricing option and under bundled service tariffs. IP claims that IIEC's proposal provides gaming opportunities and that there is no reason alternative suppliers cannot offer RTP pricing for delivery services customers.
>
> The Commission does not find either of IP's arguments convincing. Even assuming that IIEC's proposal produced gaming opportunities, which IP did not adequately demonstrate, rather than attempting to minimize such gaming

opportunities, IP simply claimed it withdrew its hourly pricing proposal. The Commission believes that IIEC's proposal will enhance the competitive market in IP's service territory. Some customers may find the hourly pricing option advantageous while other[s] find the bundled service option superior.

***

The Commission rejects IP's proposed 10% surcharge on the hourly real[-]time price in Rider PRS. It did not adequately demonstrate that it incurs costs that would be recovered through its proposed surcharge. ***

The Commission directs IP to provide partial requirements service through Rider PRS with the hourly pricing methodology it originally proposed in this proceeding, except that it shall not assess its proposed 10% surcharge or its proposed charges associated with point-to-point transmission service. In addition, the Commission directs IP to provide partial requirements service at IP's [bundled] service tariffs as it currently does. *** *The Commission believes the provision of partial requirements service through the two approved approaches has the potential to enhance competition in IP's service territory and provides IP a reasonable opportunity to recover all of the costs the Company demonstrated it will incur in providing such service.*" (Emphasis added.) March 28, 2002, Order, Ill. Commerce Comm'n No. 01-0432, at 118-19.

IP contends that the Commission violated section 16-104(f) of the Act (220 ILCS 5/16-104(f) (West 2000)) by ordering it to offer Rider PRS, with IIEC's recommended modifications, after IP had withdrawn the proposed rider. Section 16-104(f) provides:

"An electric utility may require a retail customer who elects to (i) use an alternative retail electric supplier or another electric utility for some but not all of its electric power or energy requirements, and (ii) use the electric utility for any portion of its remaining electric power and energy requirements, to place the portion of the customer's electric power or energy requirement that is to be served by the electric utility on a tariff containing charges that are set to recover the lowest reasonably available cost to the electric utility of acquiring electric power and energy on the wholesale electric market to serve such remaining portion of the customer's electric power and energy requirement, reasonable compensation for arranging for and providing such electric power or energy, and the electric utility's other costs of providing service to such remaining electric power and energy requirement." 220 ILCS 5/16-104(f) (West 2000).

According to IP, because this statutory provision reads, "An electric utility may require," it is solely within the utility's discretion to determine whether to offer a tariff of the type described in section 16-104(f). Therefore, IP believes that once it withdrew its proposed Rider PRS, section 16-104(f) prohibited the Commission from requiring it to offer the tariff. IP's interpretation of the statute is at odds with its unambiguous terms and would require reading into the statute words that are not there. Such a construction would be improper.

In interpreting a statute, a court's primary objective is to ascertain and give effect to the intent of the legislature, and that intent is best evidenced by the language used by the legislature. *Thomas M. Madden & Co. v. Department of Revenue*, 272 Ill. App. 3d 212, 215, 651 N.E.2d 218, 220 (1995); *Metro Utility Co. v. Illinois Commerce Comm'n*, 262 Ill. App. 3d 266, 273-74, 634 N.E.2d 377, 382 (1994). If statutory language is clear and unambiguous, as it is here, it will be given effect without resort to extrinsic aids for construction. *Bogseth v. Emanuel*, 166 Ill. 2d 507, 513, 655 N.E.2d 888, 891 (1995); *Reed v. Kusper*, 154 Ill. 2d 77, 85, 607 N.E.2d 1198, 1202 (1992); *Augustus v. Estate of Somers*, 278 Ill. App. 3d 90, 97, 662 N.E.2d 138, 143 (1996). Thus, "a court is not at liberty to depart from the plain language and meaning of the statute by reading into it exceptions, limitations[,] or conditions that the legislature did not express." *Kraft, Inc. v. Edgar*, 138 Ill. 2d 178, 189, 561 N.E.2d 656, 661 (1990); see also *Davis v. Toshiba Machine Co., America*, 186 Ill. 2d 181, 184-85, 710 N.E.2d 399, 401 (1999). Further, although not bound by the Commission's interpretation of a statute, because of an agency's experience and expertise, courts should give substantial weight and deference to the interpretation of a statute by the agency charged with the administration and enforcement of the statute. *Illinois Power Co. v. Illinois Commerce Comm'n*, 111 Ill. 2d 505, 511, 490 N.E.2d 1255, 1257 (1986).

Section 16-104(f) simply states that a utility may offer a tariff of the type described. The legislature expressed no intent to limit the Commission's authority, and there are no negative words in section 16-104(f) that could be construed as denying any authority to the Commission. This is in contrast to other provisions in the Act. When the legislature has wanted to provide that some action is solely within the discretion of a utility and that the Commission cannot otherwise act, it has done so explicitly. For example, section 9-244(c) of the Act provides:

> "The Commission shall open a proceeding to review any program approved under subsection (b) 2 years after the program is first implemented to determine whether the program is meeting its objectives, and may make such revisions, no later than 270 days after the proceeding is opened, as are necessary to result in the program meeting its objectives. A utility may elect to discontinue any program so revised. The Commission shall not otherwise direct a utility to revise, modify[,] or cancel a program during its term of operation, except as found necessary, after notice and hearing, to ensure system reliability." 220 ILCS 5/9-244(c) (West 2000).

After giving the utility the option of discontinuing a program that it has been told to revise, section 9-244 continues and *explicitly* prohibits the Commission from directing the utility to revise the program. No such explicit prohibition appears in section 16-104(f). IP requests this court to depart from the plain language of the statute by improperly reading into it a limitation on the authority of the Commission that the legislature did not express.

The cases that IP cites to support its interpretation of section 16-104(f) are inapposite. In all three cases, the court determined that when a statute provided that an entity "may" take some action, it did not require the entity to so act but merely that it could do so in its discretion. *In re Marriage of Freeman*, 106 Ill. 2d 290, 298, 478 N.E.2d 326, 329 (1985); *In re Estate of Ahmed*, 322 Ill. App. 3d 741, 746, 750 N.E.2d 278, 281 (2001); *Hoffman Estates Professional Firefighters Ass'n v. Village of Hoffman Estates*, 305 Ill. App. 3d 242, 250, 711 N.E.2d 1109, 1114 (1999). None of the cases cited, however, stand for the proposition that IP is advocating, that is, none determined that the statutory use of "may" not only gives the entity the option whether to act but also can be interpreted as prohibiting other entities from acting.

The Commission's adoption of Rider PRS was in furtherance of the Commission's ratemaking duty. Section 16-108(a) specifically provides that an electric utility's delivery-service tariffs are subject to article IX of the Act, which contains the Commission's ratemaking authority. 220 ILCS 5/16-108(a), 9-101 *et seq.* (West 2000). Thus, the delivery-service tariff at issue in this case is subject to all of the Commission's traditional ratemaking authority. When the Commission suspended the tariff pending a hearing and decision thereon, its statutory duty was to establish the rates proposed "or others in lieu thereof, which it shall find to be just and reasonable." 220 ILCS 5/9-201(c) (West 2000); see also *City of Chicago v. Illinois Commerce Comm'n*, 34 Ill. 2d 49, 50, 213 N.E.2d 550, 551 (1966). Further, the withdrawal of Rider PRS in and of itself had no effect on the Commission's ratemaking authority. The Commission has the authority to alter, on its own initiative, rates that have not been proposed for change. *City of Champaign v. Illinois Commerce Comm'n*, 141 Ill. App. 3d 457, 490 N.E.2d 119 (1986).

IP also argues that, even if the Commission has the authority to require it to offer Rider PRS over IP's objections, the Commission still violated section 16-104(f) by allowing customers the option to utilize either Rider PRS or the standard bundled-service tariff applicable to the customer. Section 16-104(e) of the Act permits retail customers to place a portion of their load on delivery service. 220 ILCS 5/16-104(e) (West 2000). Under section 16-104(f) of the Act, such a customer may be required to place its remaining load on a tariff containing charges that are set to recover the lowest reasonable available cost to the electric utility of acquiring power and energy to serve the customer's partial load. 220 ILCS 5/16-104(f) (West 2000).

IP claims that the Commission's decision requiring it to provide partial-requirements service through Rider PRS, thereby preventing it from recovering its cost of providing service, is arbitrary, unreasonable, not supported by substantial evidence, and not borne out by the record. The Commission correctly stated that the provision of partial-requirements service as ordered "provides IP a reasonable opportunity to recover all of the costs the Company demonstrated it will incur in providing such service." March 28, 2002, Order, Ill. Commerce Comm'n No. 01-0432, at 119. One of IIEC's witnesses, Robert R. Stephens, specifically testified that giving customers both the hourly-pricing option and the option to utilize the bundled-service tariffs should be compensatory to IP. Mr. Stephens has a bachelor of science in engineering and a master of arts in business administration. His previous employment included working as a senior analyst in the planning and operations department of the Staff of the Commission for five years. At the time of his testimony he was employed as a senior consultant for Brubaker & Associates and had participated in the analysis of various utility-rate matters in several states and the evaluation of power-supply proposals.

The Commission's rejection of IP's proposed 10% surcharge on the hourly real-time price in Rider PRS also was supported in the record. The Commission found that IP had not adequately demonstrated that it incurred costs that would be recovered through the surcharge. There is, in fact, record evidence that the proposed 10% markup on the hourly real-time price was inappropriate because IP had not demonstrated a real associated cost in serving these customers that was not already covered in its revenue requirement.

IP also criticizes the Commission's statement that allowing partial-requirements customers the option to utilize bundled-service tariffs has the potential to enhance competition in IP's service territory because "[s]ome customers may find the hourly pricing option advantageous while other[s] [may] find the bundled service option superior."

The record establishes that the movement of customer switching in IP's service territory has been extremely slow, with less than 2% of nonresidential customers in IP's service territory having opted for delivery service. The record also shows that, as the Commission stated, giving customers the bundled-service option has the potential to enhance competition in IP's service territory. IP's proposal, on the other hand, would discourage competition. As stated by Mr. Stephens:

> "Implementing this supply restriction without good reason would only serve to further hinder development of a competitive market in the IP territory, as another potential supply option is made less attractive for customers.
>
> IP has provided no basis or need for making this change in its testimony."

The Commission's concern over the lack of competition in Illinois is not only reasonable, it is mandated by statute. Article XVI of the Act specifically mandates that the Commission exercise its authority to promote the retail market for electricity. "The Illinois Commerce Commission should act to promote the development of an effectively competitive electricity market that operates efficiently and is equitable to all consumers." 220 ILCS 5/16-101A(d). Additionally, "[a]ll consumers must benefit in an equitable and timely fashion from the lower costs for electricity that result from retail and wholesale competition." 220 ILCS 5/16-101A(e) (West 2000). By adopting IIEC's recommendation, which was designed to promote competition, the Commission appropriately exercised its discretion to formulate reasonable methods of achieving stated legislative objectives. We therefore conclude that the modifications made by the Commission to IP's proposed Rider PRS were lawful and supported by substantial evidence.

For the aforementioned reasons, we affirm the order of the Commission.

Affirmed.

DONOVAN, J., with MAAG and CHAPMAN, JJ., concurring.